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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/509,720	05/09/2005	Paul Meyer	0380-CP6250203	9679
110	7590	04/20/2006	EXAMINER	
DANN, DORFMAN, HERRELL & SKILLMAN 1601 MARKET STREET SUITE 2400 PHILADELPHIA, PA 19103-2307			COLLINS, DARRYL J	
			ART UNIT	PAPER NUMBER
			2873	

DATE MAILED: 04/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/509,720	Applicant(s) MEYER, PAUL	
	Examiner Darryl J. Collins	Art Unit 2873	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-27 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 15-24, 26 and 27 is/are rejected.
- 7) ☒ Claim(s) 25 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 October 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>05092005</u> | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 15-19, 22, 23 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kurtin (U.S. Patent No. 5,138,494) in view of Wada (U.S. Patent No. 4,865,438). Kurtin teaches an eyesight correction device (column 1, lines 6-8) comprising a pair of substantially inflexible nesting lenses (Figure 4, elements 11 and 12) and a means for moving at least one of the lenses in a direction substantially normal to the refracting surfaces (Figure 4, element 13) so as to create a cleft of changing width between the facing surfaces of the lenses (Figures 3 and 4) as claimed in independent claims 15 and 27, wherein one of the lenses has a concave surface within which nests a convex surface of the other lens (Figure 4) as claimed in dependent claim 17, facing surfaces of the first and second lenses as having complementary shapes so that when they are brought together into precise juxtaposition, the cleft between them is virtually eliminated (column 4, lines 6-11) as claimed in dependent claim 19, an eyesight correction device wherein one or both of the outer lens surfaces are contoured (Figure 2) as claimed in dependent claim 22 and a pair of spectacles comprising the eyesight correction device (column 1, lines 6-8) as claimed in dependent claim 23, but fails to teach the refractive power of the lenses. Wada, however, does teach an eyesight correction device (column 2, lines 49-50) comprising a fixed objective lens and an axially movable lens (column 2, lines 65-67) having either positive or

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negative refractive power and being either concave or convex as needed to satisfy the design requirements (column 4, lines 46-51) as claimed in independent claims 15 and 27 such that viewed light travels through the concave and convex surfaces in order as claimed in dependent claim 18. Although both references are silent on the width of the cleft as it relates the focal length, however Kurtin teaches that the space between the two lenses may approach zero, which is inherently less than the focal length of either lens as claimed in dependent claim 16.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the well-known design technique of choosing the proper refractive power combination of Wada with the eyesight correction device of Kurtin to obtain an eyesight correction device to address a specific eyesight deficiency.

Claims 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kurtin (U.S. Patent No. 5,138,494) in view of Wada (U.S. Patent No. 4,865,438) as applied to claims 15 above, and further in view of MacNeille (U.S. Patent No. 3,758,201). MacNeille further teaches an eyesight correction device (Figure 1, element 10) wherein the refracting surfaces are substantially equal and opposite in focusing power (column 3, line 63 – column 4, line 2) as claimed in dependent claim 20 and wherein both of the outer surfaces are substantially planar (column 3, line 63 – column 4, line 2) as claimed in dependent claim 21. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the eyesight correction device as taught by Kurtin and Wada with the lenses of MacNeille to change the effective dioptric power.

Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kurtin (U.S. Patent No. 5,138,494) in view of Wada (U.S. Patent No. 4,865,438) as applied to claims 15

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above, and further in view of Boeder (U.S. Patent No. 2,642,776). Boeder further teaches spectacles having an eyesight correction device comprising two lens elements wherein one of the lens elements is moved relative to a fixed lens element having a single actuating mechanism common to the pair of spectacles (column 6, lines 3-35) as claimed in dependent claim 24.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the eyesight correction device as taught by Kurtin and Wada with the very well-known actuating mechanism as taught by Boeder to achieve uniform movement of the movable lens pair.

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kurtin (U.S. Patent No. 5,138,494) in view of Wada (U.S. Patent No. 4,865,438) as applied to claims 15 above, and further in view of Weinschenk, III et al (U.S. Publication 2003/0187504).

Weinschenk, III et al teaches a variable focus intraocular lens comprising an eyesight correction device comprising two spatially adjustable optics (Figure 1A, elements 12 and 14) as claimed in dependent claim 26. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the well-known vision techniques of Kurtin and Wada to the intraocular lens of Weinschenk III, et al to achieve a natural lens replacement with variable focus capabilities.

Allowable Subject Matter

Claim 25 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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The following is a statement of reasons for the indication of allowable subject matter:

The prior art taken either singularly or in combination fails to anticipate or fairly suggest the limitations of the independent claims, in such a manner that a rejection under 35 U.S.C. 102 or 103 would be proper. Although the prior art teaches an eyesight correction device, the prior art fails to teach a contact lens comprising the eyesight correction device as claimed in the instant invention.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Baker (U.S. Patent No. 3,583,790), Sims (U.S. Patent No. 5,104,214), Klemka (U.S. Patent No. 5,162,824), Lichtenfield et al (U.S. Patent No. 6,067,192) and Shirayanagi (U.S. Patent No. 6,318,857) all teach variable power optical correction devices.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darryl J. Collins whose telephone number is 571-272-2325. The examiner can normally be reached on 6:30 - 5:00 Monday - Thursday.

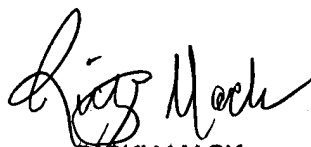
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Mack can be reached on 571-272-2333. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Darryl J. Collins
12 April 2006



RICKY MACK
SUPERVISORY PATENT EXAMINER